

**4.16 Senator S. Syvret of H.M. Attorney General regarding the appeal mechanisms available to victims of crimes should a decision be made not to prosecute their cases:**

Could the Attorney General state what appeal mechanism lays open to victims of crimes should he decide not to prosecute apparent offences? Could he identify the specific legislation which describes and confers upon him the powers to prosecute? Could he confirm that the process of mounting private prosecutions in Jersey is the same as that which prevails in the United Kingdom and, if not the same, could he explain why?

**W.J. Bailhache Q.C., H.M. Attorney General:**

The law is not settled as to whether judicial review of the Attorney's decision to prosecute or not to prosecute is possible. The Attorney prosecutes on behalf of the Crown as an exercise of the Royal Prerogative. There is legislative recognition of this in the *Loi (1864) réglant le procédure criminelle*. Private prosecutions cannot take place in Jersey, unlike in England. This is because our law is different. The Attorney's sole jurisdiction to prosecute is not, I think, a matter which comes up regularly, because the position is well known, particularly among lawyers. But it is confirmed by an Order in Council of 23rd November 1749.

**4.16.1 Senator S. Syvret:**

Am I correct in saying that, in fact, the sole power to prosecute is described in the Code of 1771 and, additionally, that in effect in the absence of any case law in the subject - the question being tested as the Attorney General originally referred to - at the moment it is fair to say that there is no effective or established appeal mechanism against this decision?

**The Attorney General:**

There is certainly no appeal mechanism. The lawyers distinguish between appeals and judicial review, and in the first part of my answer I was talking about the issue of judicial review. I have not looked at the Code of 1771 recently, but certainly the case of *Devonshire Hotels v Attorney General* confirms the Attorney General's sole jurisdiction to prosecute.

**Senator S. Syvret:**

I thank the Attorney General for his answer.

**4.16.2 Deputy G.P. Southern:**

Is it not the case with almost any administrative decision, nowadays there has to be in place an effective appeal mechanism to allow the public to appeal against any particular decision? Is the Attorney General prepared to consider ways forward to introduce such an appeal system?

**The Attorney General:**

The question as to whether there should be an appeal system may be one which might be considered by the review into the roles of the Law Officers in the fullness of time. The question as to whether or not a decision of the Attorney to prosecute is traditionally reviewable may be one for the court in the fullness of time. I think it is not a matter for me to go any further than that at the moment.

**4.16.3 The Deputy of St. Martin:**

The Attorney General will recall that when the Human Rights Law passed, there was a gap of 6 years to ensure that an audit of all legislation was carried out, and a human rights audit was carried out on the legislation prior to the Law being appointed. I think it was the Appointed Day Act. Can the Attorney General inform the House whether, in fact, an audit of that particular Law was carried out prior to the Appointed Day Act?

**The Attorney General:**

I am not sure that I personally know the answer to that question, because it predates my appointment as Attorney General, but perhaps it would be unlikely that there was an audit specifically of the Human Rights (Jersey) Law because it was modelled very much on the Human Rights Act in the United Kingdom and is very, very similar to it.

**4.16.4 The Deputy of St. Martin:**

Could I ask the Attorney General, it would seem rather strange there is no appeal mechanism, but maybe an audit could be carried out on that particular Law to ensure that it is human rights compliant?

**The Attorney General:**

I am sorry, the Deputy of St. Martin is just simply confusing 2 completely separate issues. I thought he was asking me about the Human Rights Law, and now he is talking about an appeal against decisions to prosecute. Those things are quite different. I have nothing further to add to my previous answers.

**2.16.5 Senator S. Syvret:**

Can the Attorney General give me some constructive guidance, because I was hoping to mount a private prosecution against myself?

**The Attorney General:**

No.

**The Deputy Bailiff:**

Very well. That brings question time to an end.